

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2874

Introduced by Assembly Member ~~Furutani~~ Lieber

February 22, 2008

An act to amend Section 12970 of the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2874, as amended, ~~Furutani~~ Lieber. Employment: damages.

Under the California Civil Rights Act of 2005, all persons within the jurisdiction of this state have the right to be free from violence, or intimidation by threat of violence, committed against their persons or property because of any specified characteristic or affiliation, including, but not limited to, political affiliation, position in a labor dispute, disability, medical condition, religion, sex, race, color, religion, marital status, ancestry, or national origin. The California Fair Employment and Housing Act limits the total amount of actual damages that the California Fair Employment and Housing Commission may assess against a respondent for a violation of the California Civil Rights Act of 2005, per aggrieved person, to \$150,000.

This bill would delete the \$150,000 limitation on actual damages that may be assessed by the California Fair Employment and Housing Commission against a respondent who violates the California Civil Rights Act of 2005, as an unlawful practice.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 12970 of the Government Code is amended to read:

12970. (a) If the commission finds that a respondent has engaged in any unlawful practice under this part, it shall state its findings of fact and determination and shall issue and cause to be served on the parties an order requiring the respondent to cease and desist from the unlawful practice and to take action, including, but not limited to, any of the following:

(1) The hiring, reinstatement, or upgrading of employees, with or without backpay.

(2) The admission or restoration to membership in any respondent labor organization.

(3) The payment of actual damages as may be available in civil actions under this part, except as otherwise provided in this section. Actual damages include, but are not limited to, damages for emotional injuries if the accusation or amended accusation prays for those damages. Actual damages awarded under this section for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses shall not exceed, in combination with the amounts of any administrative fines imposed pursuant to subdivision (c), one hundred fifty thousand dollars (\$150,000) per aggrieved person per respondent.

(4) Notwithstanding paragraph (3), the payment of actual damages assessed against a respondent for a violation of Section 51.7 of the Civil Code, as an unlawful practice under this part.

(5) Affirmative or prospective relief to prevent the recurrence of the unlawful practice.

(6) A report to the commission as to the manner of compliance with the commission's order.

(b) An unlawful practice under this part alone is not sufficient to sustain an award of actual damages pursuant to this section. The department is required to prove, by a preponderance of the evidence, that an aggrieved person has sustained actual injury. In determining whether to award damages for emotional injuries, and *in determining* the amount of any award for these damages, the commission shall consider relevant evidence of the effects of discrimination on the aggrieved person with respect to any or all of the following:

- 1 (1) Physical and mental well-being.
- 2 (2) Personal integrity, dignity, and privacy.
- 3 (3) Ability to work, earn a living, and advance in his or her
- 4 career.
- 5 (4) Personal and professional reputation.
- 6 (5) Family relationships.
- 7 (6) Access to the job and ability to associate with peers and
- 8 coworkers.

9 The commission shall also consider the duration of the emotional
10 injury, and whether that injury was caused or exacerbated by an
11 aggrieved person's knowledge of a respondent's failure to respond
12 adequately to, or to correct, the discriminatory practice, or by the
13 egregiousness of the discriminatory practice.

14 (c) In addition to the foregoing, in order to vindicate the
15 purposes and policies of this part, the commission may assess
16 against the respondent, if the accusation or amended accusation
17 so prays, an administrative fine per aggrieved person per
18 respondent, the amount of which shall be determined in accordance
19 with the combined amount limitation of paragraph (3) of
20 subdivision (a).

21 (d) In determining whether to assess an administrative fine
22 pursuant to this section, the commission shall find that the
23 respondent has been guilty of oppression, fraud, or malice,
24 expressed or implied, as required by Section 3294 of the Civil
25 Code. In determining the amount of fines, the commission shall
26 consider relevant evidence of, including, but not limited to, the
27 following:

- 28 (1) Willful, intentional, or purposeful conduct.
- 29 (2) Refusal to prevent or eliminate discrimination.
- 30 (3) Conscious disregard for the rights of employees.
- 31 (4) Commission of unlawful conduct.
- 32 (5) Intimidation or harassment.
- 33 (6) Conduct without just cause or excuse.
- 34 (7) Multiple violations of the Fair Employment and Housing
- 35 Act.

36 The moneys derived from an administrative fine assessed
37 pursuant to this subdivision shall be deposited in the General Fund.
38 No administrative fine shall be assessed against a public entity.
39 The commission shall have no authority to award punitive damages
40 as a remedy for a finding of employment discrimination.

1 (e) In addition to the foregoing, in order to vindicate the
2 purposes and policies of this part, the commission may assess
3 against the respondent if the accusation or amended accusation so
4 prays, a civil penalty of up to twenty-five thousand dollars
5 (\$25,000) to be awarded to a person denied any right provided for
6 by Section 51.7 of the Civil Code, as an unlawful practice
7 prohibited under this part.

8 (f) If the commission finds the respondent has engaged in an
9 unlawful practice under this part, and the respondent is licensed
10 or granted a privilege by an agency of the state to do business,
11 provide a service, or conduct activities, and the unlawful practice
12 is determined to have occurred in connection with the exercise of
13 that license or privilege, the commission shall provide the licensing
14 or privilege granting agency with a copy of its decision or order.

15 (g) If the commission finds that a respondent has not engaged
16 in an unlawful practice under this part, the commission shall state
17 its findings of fact and determination and issue and cause to be
18 served on the parties an order dismissing the accusation as to that
19 respondent.

20 (h) Any findings and determination made or any order issued
21 pursuant to this section shall be written and shall indicate the
22 identity of the members of the commission who participated
23 therein.

24 (i) Any order issued by the commission shall have printed on
25 its face references to the rights of appeal of any party to the
26 proceeding to whose position the order is adverse.

27 (j) If the commission finds that a respondent has engaged in an
28 unlawful practice under this part, and it appears that this practice
29 consisted of acts described in Section 243.4, 261, 262, 286, 288,
30 288a, or 289 of the Penal Code, the commission, with the consent
31 of the complainant, shall provide the local district attorney's office
32 with a copy of its decision and order.

33 (k) Notwithstanding Section 12960, if the commission finds
34 that a respondent has engaged in unlawful discrimination in
35 housing under Section 12948, the remedies afforded in Section
36 12987 or any other provision in this part pertaining to housing
37 discrimination, shall apply.